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Ravalli County Commissioners

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OG-07-02-215

**Date:** 27 February 2007

**From:** Karen Hughes, AICP, Planning Director *KH*

**To:** Board of County Commissioners  
Interested members of the public

**CC:** County Attorney's Office  
Planning Board

**Re:** Interpretation of "An interim zoning regulation limiting subdivisions to a density of 1 residence per 2 acres for a period of one year"

Following the Commissioners' conditional approval of the Sunnyside Orchards #3, Block 10, Lot 1-A, AP, subdivision application, the Planning Department has received numerous public comments asserting that the County has acted against the letter and the spirit of the interim zoning regulation (IZR) by allowing the creation of lots less than two (2) acres in size.

The Planning Department would like to respond to some of these criticisms, given the contentiousness of the issue and the seriousness of allegations directed against the County and the Department, including that we have shown a "lack of transparency," have "varied from the intent of the people," have "violated [the public's] trust," and have opened up a "simplistic loophole" in the law.

The Planning Department believes that these criticisms arise from a misunderstanding of conventional zoning practices. Staff's interpretation of the IZR is based on a plain reading of the regulation, upholds both the letter and the apparent intent of the law, is consistent with zoning practices throughout the country, and conforms to precedents set by Ravalli County itself.

#### Density vs. Minimum Lot Size

The authors of the recent criticisms interpret the IZR to mean that the County cannot approve a subdivision if it contains any lot less than two (2) acres in size. This rationale corresponds to the concept of a minimum lot size.

Part of the misunderstanding may be that the term "density" is both used as a general concept in the planning profession to describe relative intensity of residential development as well as a specific method (limits on units per acre) for regulating intensity of residential development. Other methods used for regulating the intensity of residential development include minimum lot size, floor area ratios, setback and yard requirements, etc.

The text of the IZR, however, makes no mention of "minimum lot size" or other methods of regulating intensity of development. Rather, it refers repeatedly to a maximum "density," as is written in the title of the regulation itself, and in the regulation's single development standard:

No preliminary plat applications may be approved that provide for the building of residences at a higher density than one dwelling per two (2) acres.

Since the adoption of the IZR, the Planning Department has administered this standard by calculating the average gross density of proposed subdivisions – i.e., the total acreage of the subject parcel divided by the number of lots – irrespective of the individual lot sizes. This is consistent with conventional zoning practice, which makes a clear distinction between "minimum lot size" and "density."

The Planning Department's treatment of "density" as an average conforms to definitions published by the American Planning Association (APA). The APA is regarded as the preeminent organization of land use planners across the nation, and offers the most widely recognized national certification program for professional planners.

In 1999, the APA published a reference manual entitled, "A Glossary of Zoning, Development, and Planning Terms". This manual forms the basis of many definitions in Ravalli County's current subdivision regulations. It offers the following definitions, as compiled from local jurisdictions around the country:

**Density:** The number of dwelling units permitted per acre.

(Staff note: Typically a jurisdiction determines whether they will calculate density based on net acres or gross acres of land. In the absence of specific provisions for which land uses will be excluded in a calculation of "net acreage," it is presumed that gross density applies.)

**Density, Gross:** The numerical value obtained by dividing the total number of dwelling units in a development by the gross area of the tract of land (in acres) within a development...

**Density, Net:** The numerical value obtained by dividing the total number of dwelling units in a development by the area of the actual tract of land (in acres) upon which the dwelling units are proposed to be located.... Net density calculations exclude rights-of-way of publicly dedicated streets and private streets.

**Density Zoning:** A device for averaging residential density over an entire parcel and placing no restrictions on lot sizes or on dwelling types.<sup>1</sup>

The distinction between density and minimum lot size is also illustrated by the regulations of other local jurisdictions. Several counties and municipalities in the State of Montana have adopted, in some form or another, zoning regulations that address density. For instance, the Missoula City Zoning Ordinance describes several different residential zoning districts, including the Semi-Rural

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<sup>1</sup> *A Glossary of Zoning, Development, and Planning Terms*. ed. by Dolnick, Fay, and Michael Davidson. American Planning Association. Chicago. December 1999. Pp 79 - 80.

Therefore, given the conventional use of the term "density" throughout the planning profession, in the regulations of other local jurisdictions in Montana, and in previous legal interpretations from the Ravalli County Attorney's Office, it can be concluded that the Planning Department has interpreted the terms of the IZR in a manner consistent with common zoning practice.

### **The Intent and Effectiveness of the Regulation**

The argument between average density and minimum lot size has received particular attention because of the public perception, demonstrated in the written comments received by the Planning Department, that enforcing average density instead of minimum lot size would undermine the effectiveness of the regulation.

An example of this misperception might be that a developer could propose a subdivision of a ten-acre parcel, including four one-acre lots and one six-acre lot, with an overall density of two acres per dwelling unit. Following the platting of this subdivision, the developer could supposedly return with an application to re-subdivide the six-acre lot into three additional lots, again meeting the average density requirement of two acres per dwelling unit. Thus, through the combination of two consecutive subdivision applications, the developer could presumably circumvent the IZR and ultimately create seven lots on ten acres.

This logic is flawed in that it ignores the presumption in planning that a density requirement refers to all subdivisions of the "parent parcel" that have taken place since the zoning regulation was put into effect. Under this assumption, the developer in the example above will have reached the maximum density upon the first subdivision. If an applicant returned under the IZR with a proposal to re-subdivide the six-acre parcel, the County would have to reject the application on the basis that the parent parcel (the original 10-acre piece) had already been subdivided to its maximum density.

Again, this issue was brought forth at the aforementioned meeting of the Ravalli County Planning Board. McCubbin is on record as stating that, for subdivisions in a zoning district with a density requirement, the Planning Department reviews the history of the original parcel to ensure that the subdivision in question, in addition to all previous subdivisions of the parcel that have occurred since the establishment of the zoning district, does not violate the density requirement with respect to the parent parcel. This practice prevents subdividers from evading maximum densities through subsequent subdivisions.

For the Grants Meadows subdivision, to put future owners and staff on notice, the Commissioners required the final plat to include a notification of the existence of the Planning and Zoning District #18, the overall density requirements of the district, and that, due to the density requirements in the Planning and Zoning District, no further subdivision of lots within this subdivision is permitted, until and unless the Planning and Zoning District is amended in regards to lot sizes and/or density or the District is dissolved.

References to the concept of the "parent parcel" can easily be found in the public records of jurisdictions around the country, including the excerpt above from the Missoula City Zoning Ordinance. The following definition, taken from a local jurisdiction in the state of New York, clarifies the relationship between the concepts of parent parcel, zoning, and subdivision (specific to net density):

**BUILDABLE YIELD:** The number of potential building lots or the maximum unit density for a proposed subdivision after deduction

Residential zone (SRR), which regulates the maximum residential density within this type of district:

The maximum residential density in the [SSR] district shall be one dwelling per five acres. For the purposes of zoning compliance for City subdivision review, lot sizes may vary for the purpose of protecting natural resources, conserving open space and enhancing environmental amenities and allowing for flexibility in site planning and project design. Lot size variations **will not increase the maximum residential density** for the zoning district or parent parcel.<sup>2</sup> (emphasis added)

Some jurisdictions choose to regulate both density *and* minimum lot size. Section 2.11 (B) of the Missoula County Zoning Resolution proscribes the following requirement:

**Maximum residential density:** Four (4) dwellings per one (1) acre

**Minimum lot area:** Ten thousand (10,000) square feet for a single-family dwelling and fifteen thousand (15,000) square feet for a two (2) family dwelling<sup>3</sup>

Flathead County has also taken this approach. The bulk and dimension requirements for Residential Cluster (RC-1) districts provide for a maximum density of one dwelling unit per acre, and also impose a minimum lot size of 2,500 or 4,500 square feet, depending on whether residential units are attached or detached.<sup>4</sup>

The Lake County zoning regulations, which address density exclusively, are explicit in their distinction between density and minimum lot size:

**Density:** The average number of residential, commercial or industrial units allowed per acre. **Density is distinct from minimum lot size.** A land division may create lots that are smaller than the required density, provided that the overall average density does not exceed the maximum number of units per acre...<sup>5</sup> (emphasis added)

Even Ravalli County has dealt with the issue of density versus minimum lot size in the past, and in one relatively recent case made a clear distinction between the two concepts. In 2005, a discussion regarding the definition of "density" arose during the public review process for the Grants Meadows Subdivision, located just south of Hamilton off Grantsdale Road. The proposed subdivision was located in the Doran Addition Voluntary Zoning District (VZD #18). The district standards for VZD #18 allow for a maximum residential "density" of one (1) dwelling per one (1) acre. The average lot size for the proposed subdivision was 0.83 acres, but complied with the average density requirement through the inclusion of open common space and one large lot for a total of 26 units on 26 acres. According to the minutes of the July 6, 2005, Planning Board public hearing, then- Deputy County Attorney James McCubbin stated that "a density requirement has to be interpreted as an average – not a minimum lot size." The Board of County Commissioners conditionally approved the subdivision on August 9, 2005.

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<sup>2</sup> Missoula City Zoning Ordinance. Title 19. Section 19.96.070. Revised January 18, 2007.

<sup>3</sup> Missoula County Zoning Resolution. Resolution No. 76-113. Amended January 31, 2001.

<sup>4</sup> Flathead County Zoning Regulations. Section 3.14.040(1). Resolution No. 955A. September 27, 1993.

<sup>5</sup> Lake County Zoning Map and Regulations. Section V. Effective October 1, 2005.

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of constrained land areas and required public improvements on the **parent parcel**, and the minimum yard, area and bulk requirements for each proposed lot have been met.<sup>6</sup> (Emphasis added)

Regarding the spirit and intent of the IZR, Planning Staff was not involved in the crafting or review of the regulation. It appeared to Staff that the general intent of the IZR was to restrict the construction of new homes, which the IZR will accomplish in equal measure, regardless of whether the IZR is interpreted as minimum lot size or average density. Given the justification described on the preceding pages, it appeared to Staff that average density was more appropriate.

### **Recent Action**

We understand from recently received public comment that the spirit and intent of the IZR may actually have been to implement a minimum lot size requirement. To ensure that the IZR is properly administered, the Planning Department has stayed connected with the County Attorney's Office by formally submitting requests for assistance in interpretation of this regulation and frequently contacting them informally about how to apply the IZR since it was enacted. Planning Staff has consistently stated to the County Attorney's Office that we understand this regulation to be an average density regulation and not a minimum lot size regulation, and have requested confirmation of our interpretation.

To date, action has only occurred on one subdivision that did not technically meet the IZR, if interpreted to be a minimum lot size regulation. This occurred at the February 22<sup>nd</sup> meeting regarding the Sunnyside Orchards #3, Block 10, Lot 1-A, AP, which had two lots each 1.96 acres in size, one 2.24 acres in size, and one 2.55 acres in size. Only minor changes (a shift in lot areas totaling 0.08 acres) would need to be made for the subdivision to comply with interim zoning, if it restricts development to a minimum lot size; therefore, the decision on this subdivision was made such that the lot layout on the final plat must meet whatever the IZR requires.

### **Conclusion**

It is the intent of Planning Staff to uphold all applicable laws in executing its duty to administer subdivision, zoning, and long-range planning for Ravalli County. The Planning Department has acted in good faith with respect to the interim zoning regulation and has not varied in any manner from the letter or intent of the law (as was apparent to Planning staff until recently), or conventional planning practice, or precedent set by Ravalli County itself. Staff hopes that this memorandum will clarify some of the misunderstandings surrounding our interpretation of the IZR.

The Department will continue to work toward building a positive working relationship with citizens and organizations interested in land use planning in Ravalli County. Planning staff welcomes the opportunity to answer citizens' questions regarding land use regulations, and to facilitate constructive, civil dialogue on matters of contention.

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<sup>6</sup> Town Code of the City of Bethlehem (New York). Chapter 103, Article II. Adopted August 24, 2005